

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

|                           |   |                       |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA  | ) |                       |
|                           | ) |                       |
| v.                        | ) | CR. NO. 2:05-cr-171-T |
|                           | ) |                       |
| CALVIN ARTIS STEWART, JR. | ) |                       |

RESPONSE TO MOTION TO SUPPRESS

Comes now the United States of America, by and through Leura Garrett Canary, United States Attorney for Middle District of Alabama, and in response to the Motion to Suppress Statement filed by the Defendant herein, the following is submitted:

1) The Defendant has correctly stated that his vehicle was stopped based upon the police officer's belief that the Defendant had committed a traffic violation. The Defendant also correctly states that the Defendant stated he wanted to call his lawyer during the period of the traffic stop.

2) The police officer who stopped the Defendant told him he was being stopped to be given a verbal warning. The officer then advised the Defendant to be careful passing school buses during the morning and evening hours because school children would be boarding and unloading for school. The Defendant then apologized to the school bus driver for running the school bus sign.

3) The police officer patted the Defendant down for his safety after issuing the verbal warning and found that the Defendant had a pistol in the small of his back. The Defendant was then arrested for carrying a pistol without a permit. After the Defendant was placed under arrest, his vehicle was searched and marijuana and crack cocaine was found within the vehicle.

4) The police officer read the Defendant the Miranda warning and the Defendant advised he understood his rights. The police officer asked the Defendant if the items in the vehicle belonged to him and the Defendant stated the gun and drugs in the vehicle were his.

5) Under Miranda v. Arizona, police officers must advise persons in custody of their rights. The Miranda warnings must be given only when a suspect is both in custody and subjected to state interrogation. Illinois v. Penkins, 496 U.S. 292 (1990). Custody involves the deprivation

of freedom of action in any significant way. United States v. Acosta, 363 F.3d 1141 (11th Cir. 2004).

6) Clearly, the Defendant was not in custody until after the pistol and drugs were found. The officers then advised the Defendant of his rights pursuant to Miranda and the Defendant advised he understood his rights. Only then was the Defendant questioned about the pistol and drugs and he knowingly and voluntarily told the police officer the pistol and drugs were his.

7) Eight v. Singletary, 50 F.3d 1539, 1548 (11<sup>th</sup> Cir. 1995), which is cited by the Defendant in his motion, states that the accused's right to counsel does not attach until a prosecution is commenced.

8) There was no custodial interrogation of the Defendant prior to his being advised of his Miranda rights and the statement he made is not due to be suppressed.

Wherefore, premises considered, the United States submits that Defendant's Motion to Suppress Statement is due to be denied.

Respectfully submitted this the 27th of October, 2005.

LEURA GARRETT CANARY  
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:  
Kevin L. Butler.

Respectfully submitted,

LEURA GARRETT CANARY  
UNITED STATES ATTORNEY

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